

PRESIDENT MOUL: Senator Hohenstein.

SENATOR HOHENSTEIN: Madam President and members of the body, the amendment, I think, has been passed out to all of the members. It basically makes one minor change and clarifies, I think, what my concern was. Let me explain what it does and then explain why I think it's necessary. And if the amendment is adopted, then my objections to the bill go away. What the amendment does is add some language after a provision so if, in fact, the bill is amended, it will read, "a determination is made regarding the speed of any motor vehicle based upon the visual observation of any peace officer while being competent evidence for all other purposes, shall be corroborated by the use of"...and these other devices go on. My concern at the debate last week was that we were going to determine that visual observations by a law enforcement or peace officer were not competent evidence. And let me explain how that might work to a disadvantage. There are many occasions when an officer is going to testify as to the visual observation of speed. Let's take a for instance, this officer is stopped at "O" Street, he does not have his radar device turned on, he's not actively pursuing radar investigation or speed investigation. He sees a car come through that intersection, now because of his training he's going to have the ability to tell that that vehicle is traveling in excess of the maximum posted speed limit, that may be 2 miles, 10 miles, 20 miles. He can't probably tell how fast it's going but he can say, yes, it was speeding. That gives him probable cause to stop that vehicle. That vehicle may be being operated by an intoxicated driver, it may be something else entirely. It does not, however, give him the authority to cite and ticket that individual for speeding. After the debate the other day, I talked with Senator Chambers and we discussed this at some length. He provided me with some information which I did not have at that time and which, basically, said although the law doesn't say it because we have the permissive "may" in the statute, the case law said that if, in fact, you want to convict somebody of speeding, you better have a couple of things. One of them was the visual observation and the other part of that was in order to be cumulative evidence and in order to be evidence which is sufficient beyond a reasonable doubt you have to have something else which is some sort of mechanical or radar or VASCAR device. Now with the amendment that we approved the other day, we do have the availability of the car clocks. Again, you have to prove that all of this stuff is reliable and accurate. But what this amendment essentially does is allow